

July 16, 1992

The Honorable Lawrence S. K. Lee
Director of Office of Veterans Services
Department of Defense
733 Bishop Street, Suite 1270
Honolulu, Hawaii 96813

Dear Mr. Lee:

Re: Disclosure of Names, Ethnicity, and Home Addresses of
Veterans Who Reside in the State of Hawaii

This is in reply to your letter to the Office of Information Practices ("OIP") dated January 30, 1992, requesting an advisory opinion concerning the above-referenced matter.

ISSUES PRESENTED

I. Whether, under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), the State of Hawaii ("State"), through its various agencies, may disclose the names, ethnicity, and home addresses of veterans who reside in the State to: (1) the United States Department of Veterans Affairs ("VA"), or (2) the State Office of Veterans Services ("OVS").

II. To the extent that the UIPA authorizes State agencies to disclose the above information relating to the veterans to the VA, whether the UIPA authorizes the disclosure of the requested information in an electronic, or other similar form.

BRIEF ANSWERS

I. We conclude that State agencies generally may not disclose to the VA the name, ethnicity, and home address of each veteran who resides in the State. First, based upon previous OIP opinion letters, we believe that the disclosure of this information would constitute a "clearly unwarranted invasion of personal privacy" under the UIPA. Additionally, the inter-agency disclosure of this information to the VA is not authorized by section 92F-19, Hawaii Revised Statutes, which sets forth the

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limited conditions under which one agency may disclose to another agency government records that are not otherwise "public" under part II of the UIPA. Specifically, only two provisions of section 92F-19, Hawaii Revised Statutes, authorize the disclosure of information to federal agencies, both of which we find inapplicable to the facts in this case.

In contrast, we conclude that State and county agencies may disclose this otherwise protected information to the OVS, under section 92F-19(a)(3), Hawaii Revised Statutes. Under this provision, the inter-agency disclosure of otherwise "confidential" information is permissible if it "reasonably appears proper for the performance of the requesting agency's duties and functions." The OVS intends to use the veterans' names, home addresses, and ethnicity to establish and maintain a veterans' registry. The registry would be used by the OVS as a mailing list for its newsletter and for questionnaires designed to obtain information required to plan for future services for veterans.

In our opinion, the OVS' intended use of the subject information is reasonably proper for the performance of the OVS' express statutory duties, as those duties are described in section 363-3, Hawaii Revised Statutes. Therefore, we conclude that section 92F-19(a)(3), Hawaii Revised Statutes, authorizes the inter-agency disclosure to the OVS of the information involved in this case.

II. In a previous OIP advisory opinion letter, we concluded that under the UIPA, an agency must make available copies of a government record in the form requested, such as on a floppy diskette or computer tape, as long as the information is physically maintained by the agency in that form. Accordingly, under the UIPA, state and county agencies must provide copies of the veterans' records in the form requested by the OVS, if the agencies maintain the information in that form.

FACTS

By letter dated January 30, 1992, the OVS informed the OIP that the VA is interested in sending letters to all State executive branch agencies to solicit their assistance in developing a registry of veterans who reside in the State. Specifically, the VA seeks to obtain all available information that is maintained by State agencies reflecting each veteran's status as a veteran, ethnicity, and brief personal data such as current home address. We are informed that the "brief personal data" sought may also include information concerning each veteran's medical condition and pension status. The purpose of

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the registry is to provide a base upon which to produce accurate decisions affecting veterans in the future. The information may also be used by the VA to identify minority veterans for a study of post-traumatic stress disorder syndrome.

In its letter to the OIP, the OVS requests an opinion regarding whether, under the UIPA, information concerning a veteran's name, ethnicity, and current address may be disclosed to the VA, and if so, in what format the requested information may be provided.

Furthermore, the OVS requests the OIP to advise it whether State agencies are authorized to provide the OVS with the information requested by the VA, so that the OVS itself could: (1) establish and maintain the registry, (2) distribute questionnaires in cooperation with the VA, and (3) distribute the OVS' newsletter.

DISCUSSION

I. INTRODUCTION

The UIPA generally provides that "[a]ll government records are open to public inspection unless access is restricted or closed by law." Haw. Rev. Stat. 92F-11(a) (Supp. 1991); see also Haw. Rev. Stat. 92F-12 (Supp. 1991) (instances in which disclosure of government records is mandated). The UIPA further provides that unless one of the exceptions set forth in section 92F-13, Hawaii Revised Statutes, authorizes an agency to withhold access to government records, they must be made available for inspection and copying upon request by any person. See Haw. Rev. Stat. 92F-11(b) (Supp. 1991).

In addition to the disclosures authorized under the above UIPA provisions, the UIPA contains provisions that apply exclusively to the inter-agency disclosure of government records. Specifically, section 92F-19, Hawaii Revised Statutes, describes the limited conditions under which one agency may disclose government records that are not otherwise "public" under the UIPA to another agency.¹

Thus, State agencies must disclose the information to

¹The limitations of section 92F-19, Hawaii Revised Statutes, apply only if the government record is not otherwise publicly accessible under sections 92F-11 and 92F-12 of the UIPA. See Haw. Rev. Stat. § 92F-19(a)(10) (Supp. 1991); see also Haw. Rev. Stat. § 92F-3 (Supp. 1991) ("person" includes an "agency").

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another agency if it is "otherwise subject to disclosure" under the UIPA, and they may disclose otherwise confidential information to another agency if at least one of the applicable conditions of inter-agency disclosure under section 92F-19, Hawaii Revised Statutes, is met. See Haw. Rev. Stat. 92F-19(a)(10) (Supp. 1991).

We shall first examine whether the disclosure of government records containing the names, ethnicity, and home addresses of veterans who reside in the State is "public" information under part II of the UIPA.

II. CLEARLY UNWARRANTED INVASION OF PERSONAL PRIVACY

The only one of the UIPA's statutory exceptions to required agency disclosure that would arguably apply to the veterans' information involved in this case is set forth in section 92F-13(1), Hawaii Revised Statutes. This section provides in pertinent part:

92F-13 Government Records; exceptions to general rule. This chapter shall not require disclosure of:

- (1) Government records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy;

Haw. Rev. Stat. 92F-13(1) (Supp. 1991).

The UIPA's personal privacy exception involves a "balancing" of competing interests. Specifically, the UIPA states that "[d]isclosure of a government record shall not constitute a clearly unwarranted invasion of personal privacy if the public interest in disclosure outweighs the privacy interests of the individual." Haw. Rev. Stat. 92F-14(a) (Supp. 1991). Furthermore, the UIPA's legislative history instructs that "[i]f the privacy interest is not 'significant,' a scintilla of public interest in disclosure will preclude a finding of a clearly unwarranted invasion of personal privacy." S. Conf. Comm. Rep. No. 235, 14th Leg., 1988 Reg. Sess., Haw. S.J. 689 (1988); H. Conf. Comm. Rep. No. 112-88, Haw. H.J. 817, 818 (1988).

A. Names and Home Addresses

In previous OIP advisory opinions, we concluded that the disclosure of the names and residential addresses of private individuals would generally constitute a clearly unwarranted

invasion of personal privacy. We reached this conclusion after consulting court decisions that applied Exemption 6 of the federal Freedom of Information Act, 5 U.S.C. 552(b)(6) (1988) ("FOIA").² See OIP Op. Ltr. Nos. 89-4 (Nov. 9, 1989); 89-16 (Dec. 27, 1989); 90-24 (July 9, 1990); 90-29 (Oct. 5, 1990); 92-4 (June 10, 1992). We find no basis to depart, in this opinion, from our previous conclusion that individuals have a significant privacy interest in information such as their names and residential addresses and that disclosure of that information would, in most cases, constitute a clearly unwarranted invasion of their personal privacy.

B. Ethnicity

In a previous opinion, the OIP determined that individuals have a significant privacy interest in information revealing their ethnicity. See OIP Op. Ltr. No. 91-19 (Oct. 18, 1991). This significant privacy interest must be balanced against the public interest in disclosure to determine whether disclosure would constitute a clearly unwarranted invasion of personal privacy. See Haw. Rev. Stat. 92F-14(a) (Supp. 1991).

In previous OIP advisory opinions, we concluded that the "public interest" to be considered under the UIPA's balancing test is the public interest in the disclosure of "[o]fficial information that sheds light on an agency's performance of its statutory duties," see OIP Op. Ltr. No. 90-7 (Feb. 9, 1990), and in information which sheds light upon the conduct of government officials, see OIP Op. Ltr. No. 90-17 (Apr. 24, 1990). Two of the UIPA's basic policies are to "[p]romote the public interest in disclosure" and to "[e]nhance governmental accountability through a general policy of access to government records." Haw. Rev. Stat. 92F-2 (Supp. 1991).

Further, in enacting the UIPA, the Legislature declared that "it is the policy of this State that the formation and conduct of public policy--the discussions, deliberations, decisions, and action of government agencies--shall be conducted as openly as possible." Haw. Rev. Stat. 92F-2 (Supp. 1991). Thus, the public interest to be considered in applying the UIPA's balancing test is the public interest in disclosure of information that sheds light upon an agency's performance of its duties and the conduct of government officials, or which otherwise promotes

²Exemption 6 provides that an agency shall not disclose "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."

governmental accountability. On the contrary, however, in previous OIP advisory opinions, we reasoned that this "public interest," in the usual case, is "not fostered by disclosure of information about private citizens that is accumulated in various government files but that reveals little or nothing about any agency's own conduct." OIP Op. Ltr. No. 89-16 (Dec. 27, 1989) (quoting U.S. Department of Justice v. Reporters Committee for Freedom of the Press, 489 U.S. 749 (1989)).

Applying the above principles to the ethnicity information requested by the VA, we find the absence of a significant public interest in its disclosure under the UIPA. Specifically, the disclosure of the ethnicity of veterans who reside in the State would reveal little, if anything, about the conduct of a State or county agency or its officials, nor will the disclosure of this information otherwise further the UIPA's policy of enhancing government accountability.³ Consequently, we believe that the veterans' significant privacy interest in their ethnicity outweighs the public interest, if any, in the disclosure of this information, and, therefore, the disclosure of that information would be a clearly unwarranted invasion of personal privacy under the UIPA.

The OIP is informed that the VA also seeks other "brief personal data" concerning each veteran, such as information about each veteran's medical condition and pension status. Section 92F-14(b), Hawaii Revised Statutes, provides examples of information in which an individual is deemed to have a significant privacy interest, including information: (1) relating to an individual's medical, psychiatric, or psychological history, diagnosis, condition, treatment, or evaluation, and (2) describing an individual's income, assets, and finances. Haw. Rev. Stat. 92F-14(b)(1) and (6) (Supp. 1991). These legislatively enumerated examples appear to encompass information regarding each veteran's medical condition and pension data. However, because the exact nature and extent of the medical and pension, and perhaps other, information contained in government records sought by the VA has not been made clear to the OIP, we shall not express a conclusion concerning the disclosure of this information.⁴

³The UIPA applies to and governs the records of government agencies within the State of Hawaii. Consequently, we need not examine whether the disclosure of information about veterans residing in the State would "shed light" on the conduct of the federal government, specifically, the VA.

⁴See OIP Op. Ltr. No. 90-1 (Jan. 8, 1990) (disclosure of information regarding pension benefits of retired public

Although we find that the information requested by the VA is protected from public disclosure under the UIPA's clearly unwarranted invasion of personal privacy exception, as discussed above, the UIPA does provide limited circumstances under which otherwise confidential information may be disclosed by one agency to another agency.

III. UIPA'S INTER-AGENCY DISCLOSURE PROVISIONS

A. Disclosure to the VA

As we explained above, section 92F-19, Hawaii Revised Statutes, sets forth the limited conditions under which an agency may disclose otherwise confidential government records to another "agency." The purpose of the UIPA's limitations on the inter-agency disclosure of otherwise confidential information is to further the UIPA's policy of "[m]ak[ing] government accountable to the individual in the collection, use, and dissemination of information relating to them." Haw. Rev. Stat. 92F-2 (Supp. 1991).

In OIP Opinion Letter No. 90-9 (Feb. 26, 1990), we concluded that only paragraphs (5) and (8) of section 92F-19(a), Hawaii Revised Statutes, authorize the disclosure of government records to agencies of the federal government. We reached this conclusion, because the UIPA's statutory definition of the term "agency" only includes "a unit of government in this State." Therefore, for disclosure to federal agencies to be permitted, it must be specifically authorized by either of the following two provisions of section 92F-19, Hawaii Revised Statutes:

92F-19 Limitations on disclosure of government records to other agencies. (a) No agency may disclose or authorize disclosure of government records to any other agency unless the disclosure is:

. . . .

- (5) To an agency or instrumentality of any governmental jurisdiction within or under the control of the United States, or to a foreign government if specifically authorized by treaty or statute, for a civil or criminal law

employees).

enforcement investigation;

. . . .

- (8) To authorized officials of a department or agency of the federal government for the purpose of auditing or monitoring an agency program that received federal moneys;

Haw. Rev. Stat. 92F-19(a) (Supp. 1991).

We find that the provisions of subsection (a)(5) above do not apply to the facts presented in this opinion. As discussed earlier, the VA is merely seeking to establish a registry of veterans as a basis for future decision-making; we have no reason to conclude that it is conducting a civil or criminal law enforcement investigation. Therefore, in our opinion, section 92F-19(a)(5), Hawaii Revised Statutes, does not authorize disclosure of the requested information to the VA.

We now turn to examine whether paragraph (8) of subsection (a) authorizes disclosure of the pertinent information to the VA. We first must determine whether disclosure of the personal information regarding the veterans would be to an "agency program that received federal moneys."

In a previous advisory opinion, we determined that the Board of Water Supply's disclosure of the home telephone numbers of Board of Water Supply customers to the U.S. Attorney for the purpose of collecting defaulted student loans, "while useful in locating individuals who are in default, would not constitute the act of auditing or monitoring an 'agency program.' Rather, the best that can be said is that such information would only monitor individuals, not programs." OIP Op. Ltr. No. 90-9 at 13 (Feb. 26, 1990). Similarly, we find that the VA's use of personal information concerning veterans to establish a registry and to gather information through questionnaires does not constitute the act of auditing or monitoring an "agency program."

Additionally, even assuming that the veterans residing in the State or the entire OVS program constitutes an "agency program" that receives federal moneys, we still would need to find that the disclosure to the VA of the names, ethnicity, and home addresses of the veterans is made "for the purpose of auditing or monitoring" such an agency program.

In OIP Opinion Letter No. 90-9 (Feb. 26, 1990), we construed

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the meaning of the terms "audit" and "monitor" as follows:

It is a cardinal rule of statutory construction that where a statute does not define the term sought to be construed and the words are ones in common usage, they are to be given their common meaning. 2A N. Singer, Sutherland Statutory Construction 48.28 (Sands 4th ed. rev. 1984). Webster's Ninth New Collegiate Dictionary 11 (1988), defines "audit" as follows:

- 1: a: a formal examination of an
 organization's or individual's accounts
 or financial situation

 b: the final report of an audit.
- 2: a methodical examination and review.

Similarly, ["monitor"] is defined as:

- 1: to watch, observe or check esp. for
 a [special] purpose

- 4: to keep track of, regulate, or
 control the operation of (as a
 machine or process).

OIP Op. Ltr. No. 90-9 at 12 (Feb. 26, 1990) (quoting Webster's Ninth New Collegiate Dictionary 767 (1988)).

Based on the above construction of the terms "audit" and "monitor," in our opinion the disclosure of the names, ethnicity, and home addresses of veterans to permit the VA to establish a registry and to gather information through questionnaires would not be for the purpose of either "auditing" or "monitoring" an "agency program."

Accordingly, we conclude that section 92F-19, Hawaii Revised Statutes, does not authorize the disclosure of each veteran's name, ethnicity, and home address to the VA.

B. Disclosure to the OVS

As described above, section 92F-19, Hawaii Revised Statutes, sets forth the conditions under which one agency may disclose otherwise confidential government records to another government agency. One relevant circumstance under which inter-agency

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disclosure is authorized is when it "[r]easonably appears to be proper for the performance of the requesting agency's duties and functions." Haw. Rev. Stat. 92F-19(a)(3) (Supp. 1991).

In OIP Opinion Letter No. 90-9 (Feb. 26, 1990), we determined that section 92F-19(a)(3), Hawaii Revised Statutes, "must be narrowly construed in order to effectuate the clear legislative intention that the UIPA '[m]ake government accountable to individuals in the collection, use, and dissemination of information relating to them.'" [citation omitted] OIP Op. Ltr. No. 90-9 at 10 (Feb. 26, 1990).⁵ Consequently, we concluded that the inter-agency disclosure of information under this provision is proper only if it "reasonably appear[s] to directly further an agency's performance of its expressed constitutional or statutory purposes and duties, or those that may be fairly implied." Id.

Section 363-3, Hawaii Revised Statutes, sets forth the responsibilities and duties of the OVS. This section provides, in relevant part, as follows:

363-3 Activities of the office. Except as otherwise provided by law, the office shall:

- (1) Maintain or cause to be maintained . . . a center to which veterans, their families and dependents may come for information, counsel, aid, and assistance, and by which they may be directed or referred to any agency in the community whose function it is, by law or otherwise, to provide the services, assistance, or benefits which in each instance appear necessary or appropriate. Agencies to which any referrals may be made shall include, but are not limited to, departments and divisions of the federal and state governments, veterans' organizations, and so-called "private" social agencies.
- (2) Assume the initiative, in

⁵See also OIP Op. Ltr. No. 91-18 (Oct. 15, 1991) (discussion about legislative and judicial disfavor toward inter-agency disclosure of records about individuals).

cooperation with agencies in the community, for coordinating all services now available, and which hereafter may become available, for the use and benefit of veterans. . . .

- (3) Assemble, analyze, compile, and disseminate factual up-to-date information with respect to (A) benefits, rights, and services of whatever nature to which veterans, their families and dependents are entitled or which may be available to them, (B) the structure, functions, area of service, and other pertinent information regarding each agency and organization participating in the veterans' assistance program in the State.
- (4) Cooperate with federal departments and other agencies which by law have responsibility for administration of rights and benefits granted by the federal government to veterans, their families and dependents. . . .⁶

Haw. Rev. Stat. 363-3 (1985 & Supp. 1991).

Additionally, the director of the OVS is directed to oversee the "planning, evaluation, and coordination of veterans programs and development of a statewide service delivery network." Haw. Rev. Stat. 363-2(c)(2) (Supp. 1991).

The OIP is informed that the OVS intends to use the pertinent information about the veterans to establish and maintain a veterans' registry. This registry would be used by

⁶Section 92F-12(b)(2), Hawaii Revised Statutes, requires each agency to disclose "[g]overnment records which, pursuant to federal law or a statute of this State, are expressly authorized to be disclosed to the person requesting access." In our opinion, section 363-3(4), Hawaii Revised Statutes, is not a State statute that expressly authorizes disclosure of the relevant records. Moreover, we are not aware of any federal law that expressly authorizes such disclosure.

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the OVS as a mailing list for its newsletter and for questionnaires designed to obtain information that would be of assistance in planning future services for the veterans who reside in the State.

Based upon our examination of the OVS' statutory duties and responsibilities, it is our opinion that disclosure of the names, home addresses, and ethnicity of veterans to the OVS reasonably appears to be proper for the performance of the OVS' express statutory duties. In particular, we conclude that disclosure would be proper for the performance of the OVS' duties under section 363-3, Hawaii Revised Statutes. Therefore, we conclude that disclosure of information to the OVS in this instance is authorized under section 92F-19(a)(3), Hawaii Revised Statutes.

It is important for the OVS to note that under section 92F-19, Hawaii Revised Statutes, confidential information that is permissibly disclosed by one government agency to another does not lose its confidential status once it is possessed by the recipient agency. See Haw. Rev. Stat. 92F-19(b) (Supp. 1991).

Thus, the OVS is not authorized to disclose the confidential information concerning the veterans to any other person or agency, unless such disclosure is also sanctioned under the UIPA.

IV. REQUESTER'S CHOICE OF DISCLOSURE FORMATS

Although the OVS' question concerning the form in which information may be provided related to the information requested by the VA, this question applies equally to any information that State and county agencies may provide to the OVS. In OIP Opinion Letter No. 90-35 (Dec. 17, 1990), we concluded that "under the UIPA, as long as the information is physically maintained in the format requested by a person, an agency must make copies of the government record in the format requested, such as on a floppy diskette or computer tape." *Id.* at 3. We reached this conclusion based upon the definition of the term "government record," which specifically includes information maintained by an agency in any physical form. Therefore, under the UIPA, State and county agencies must provide copies of government records in the form requested by the OVS, if those agencies maintain the information in that form.

CONCLUSION

For the reasons stated above, we conclude that the information requested by the VA is protected from public disclosure under section 92F-13(1), Hawaii Revised Statutes. We also conclude that the UIPA's inter-agency disclosure provisions do not authorize the disclosure of the information to the VA.

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However, based on the facts presented, we conclude that under section 92F-19(a)(3), Hawaii Revised Statutes, State and county agencies may disclose information concerning the names, home addresses, and ethnicity of veterans to the OVS. Finally, we conclude that under the UIPA, copies of any veterans' records disclosed to the OVS by State and county agencies must be

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provided in the form requested by the OVS, if those agencies
maintain the information in that form.

Very truly yours,

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